இணைப்பு—VI

[538ம் பக்கத்தில் இனம் 6 (4)க்கான அடிக்குறிப்பைக் காண்க.]

L.A. BILL No. 13 OF 1981.

(As passed by the Assembly.)

THE TAMIL NADU PAYMENT OF SUBSISTENCE ALLOWANCE BILL, 1981.

A Bill to provide for the payment of subsistence allowance to employees during the period of suspension.

BE it enacted by the Legislature of the State of Tamil Nadu in the Thirty-second Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Tamil Nadu Payment of Subsistence Allowance Act, 1981.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the Government may, by notification, appoint.

2. *Definitions.*—In this Act unless the context otherwise requires,—

(*a*) " employee " means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person—

(i) who is employed mainly in a managerial or administrative capacity ; or

(ii) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature ;

(*b*) "employer" means the owner of an establishment and includes any person entrusted with the supervision and control of employees in such establishment;

(*c*) "establishment" means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, and with respect to which the executive power of the State extends, but does not include—

(i) any office or department of the Central or the State Government; or

(ii) a railway administration; or

(iii) any mine or oil field; or

(iv) any major port; or

(v) any public sector undertaking of the Central Government.

Explanation.—For the purpose of this clause "any public sector undertaking of the Central Governmentn" means an establishment owned, controlled or managed by—

(1) the Central Government or a department of the Central Government;

(2) a Government company as defined in section 617 of the Companies Act, 1956 (Central Act I of 1956) and owned or controlled by the Central Government;

(3) a Corporation established by or under a Central Act, which is owned, controlled or managed by the Central Government;

(*d*) "Government" means the State Government;

(*e*) "industry" means an industry as defined in section 2 (*j*) of the Industrial Disputes Act, 1947 (Central Act XIV of 1947);

(*f*) "period of suspension" includes the period taken to obtain permission where such permission of the authority under sub-section (1) of section 33 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), is necessary before the employment of an employee is validly terminated.

(*g*) " suspension " means an interim decision of an employer as a result of which an employee is debarred temporarily from attending to his office and performing his functions in the establishment on the ground that—

(1) an enquiry into grave charges against him is contemplated or is pending or no final order after the completion of the enquiry has been passed ; or

(2) a complaint against him of any criminal offence is under investigation or trial or the complaint has not been finally disposed of ;

(*h*) " wages " shall have the same meaning as in clause (*rr*) of section 2 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

3. *Payment of subsistence allowance.*—(1) An employee who is placed under suspension shall, during the period of such suspension, be entitled to receive payment from the employer as subsistence allowance, an amount equal to fifty percentum of the wages which the employee was drawing immediately before suspension, for the first ninety days reckoned from the date of such suspension :

Provided that where the period of suspension exceeds ninety days, but does not exceed one hundred and eighty days, the employee shall be entitled to receive, after the said period of ninety days, a subsistence allowance equal to seventy-five percentum of the wages which the employee was drawing immediately before his suspension ;

Provided further that where the period of suspension exceeds one hundred and eighty days, the employee shall be entitled to receive wages in full which the employee was drawing immediately before his suspension :

Provided also that where the enquiry or criminal proceeding is prolonged beyond the period of ninety days for reasons directly attributable to the employee, the subsistence allowance shall, for the period exceeding ninety days, be reduced to fifty percentum of the wages which the employee was drawing immediately before his suspension.

(2) An employee shall not be entitled to receive any subsistence allowance if he accepts any other employment during the period of his suspension in any establishment other than the establishment where he had been working immediately before his suspension.

(3) An employee shall not, in any event, be liable to refund or forfeit any part of the subsistence allowance admissible to him under section (1):

Provided that where the employee is exonerated of the charge based on which his suspension was ordered, the subsistence allowance paid to him for any period shall be adjusted against the full wages admissible to him for the period of suspension.

(4) The subsistence allowance under sub-section (1) shall be paid by the employer to the employee on the date or dates on which the wages due to the employee, but for his suspension, would have become payable.

4. *Recovery of money due from an employer.*—Where any money is due to an employee from an employer under this Act, the employee himself or any other person authorised by him in this behalf or in the case of the death of the employee, his legal representative may, without prejudice to any other mode of recovery make an application to the Government in such manner as may be prescribed for the recovery of money due to him, and if the Government, after giving the employer an opportunity of being heard, in such manner as may be prescribed, are satisfied that any money is so due, they shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the Government are satisfied that the applicant had sufficient cause for not making the application within the said period.

5. *Saving of certain rights and privileges.*—Nothing in this Act shall affect any right or privilege to which any employee is entitled on the date of commencement of this Act under any law for the time being in force or under any contract, custom or usage which is more favourable to him than any right or privilege conferred upon him by this Act.

6. *Power to grant exemption.*—The Government may, if they think fit so to do, in the public interest, by notification exempt, subject to such conditions, if any, as may be specified in such notification, from the operation of all or any of the provisions of this Act, any class or classes of establishments, for such period or periods and for such reasons as may be specified in the said notification.

7. *Delegation of powers of Government.*—(1) The Government may, by notification, authorise any authority or officer subordinate to them to exercise all or any of the powers vested in them by this Act and may in like manner withdraw such authority.

(2) The exercise of any powers delegated under sub-section (1) shall be subject to such restrictions and conditions as may be prescribed or as may be specified in the notification and also to control and revision by the Government or by such officer as may be empowered by the Government in this behalf. The Government shall also have power to control and revise the act or proceedings of any officer so empowered.

8. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule made thereunder.

9. *Penalties.*—Whoever contravenes any provision of this Act or any rule made thereunder shall be punishable with imprisonment for a term which may extend to three months or with fine which shall not be less than one thousand rupees or with both.

10. *Exemption of occupier or manager from liability in certain cases.*—Where the occupier or manager of an establishment is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the prosecutor not less than three clear days' notice in writing of his intention so to do, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if after the commission of the offence has been proved, the occupier or manager of the establishment as the case may be, proves to the satisfaction of the Court—

(*a*) that he has used due diligence to enforce the execution of this Act, and

(*b*) that the said other person committed the offence in question without his knowledge, consent or connivance,—

that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the establishment, and the occupier or manager, as the case may be, shall discharge from any liability under this Act in respect of such offence :

Provided that in seeking to prove as aforesaid, the occupier or manager of the establishment, as the case may be, may be examined on oath, and his evidence and that of any witness whom he calls in his support shall be subject to cross examination on behalf of the person he charges as the actual offender and by the prosecutor :

Provided further that, if the person charged as the actual offender by the occupier or manager cannot be brought before the Court at the time appointed for hearing the charge, the Court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the charge against the occupier or manager and shall, if the offence be proved convict the occupier or manager.

11. *Cognizance of offences.*—(1) No Court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by an officer generally or specially authorised in this behalf by the Government.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable by or under this Act.

12. *Power to make rules.*—(1) The Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for—

(*a*) all matters expressly required or allowed by this Act to be prescribed;

(*b*) the manner in which, and the conditions subject to which the subsistence allowance is payable ; and

(*c*) the restrictions and conditions subject to which powers under this Act may be delegated.

13. *Rules and notifications to be placed before the Legislature.*—(1) (*a*) All rules made under this Act shall be published in the *Tamil Nadu Government Gazette* and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(*b*) All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are published.

(2) Every rule made or notification issued under this Act shall, as soon as possible after it is made or issued, be placed on the table of both Houses of the Legislature, and if, before the expiry of the session in which it is so placed or the next session both Houses agree in making any modification in any such rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.